S.B.CIVIL WRIT PETITION NO.429/2005
(LRs of Mohan Singh Vs. UOI & ors.)

DATED: 12th July 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mrs. Deepika Vyas for the petitioner
Mr. V.K.Mathur for the respondents.

The petitioner Mohan Singh (since deceased and his legal representatives, wife and son, having been substituted by the order dated 20.02.2007) filed this writ petition on 15.01.2005 with the prayer for issuance of appropriate writ, order or direction against the respondents for payment of pension from 16.05.1977 with interest.

The petitioner averred that he was appointed on the post of Telephone Operator on 15.01.1957 and served the respondents without any cause of complaint for 20 years; and lastly he was discharging his duties as LSG-Monitor at Nagaur. According to the petitioner, he wanted to contest assembly election and thus tendered resignation on 16.05.1977 with immediate effect (Annex.2); and his resignation was accepted with effect from 18.05.1977 forenoon (Annex.3). The petitioner averred that he lost assembly election and thus within 90 days the resignation was withdrawn by him but the same was not accepted by the

respondents for which he previously filed Original Application No.300/1980 before the Central Administrative Tribunal ('CAT') that was dismissed on 03.03.1993 (the order so made by the CAT has not been placed on record).

The petitioner alleged that he made several representations to the respondents to allow him pension for he had completed 20 years' qualifying service prior to resignation; and while annexing a few such representations as Annexure 4 to Annexure 7, alleged that no heed was paid to his representations and his family members were facing starvation. According to the petitioner, Rule 48-A of the Central Services (Pension) Rules, 1972 ('the Rules of 1972') provide for qualifying service of 20 years and hence, he was eligible to get the benefit of pension but the respondents have unreasonably denied the same. The petitioner also alleged that he belongs to SC/ST class and to the down-trodden section of society; and while other similarly situated persons who had completed 20 years of qualifying service were granted pension but deliberately and with ulterior motive, he was being deprived of the same.

In reply to the show cause notice, the respondents have pointed out that the petitioner was not entitled for any pension under Rule 48-A of the Rules of 1972 that pertains to voluntary retirement after completion of 20 years of service

because the petitioner had not taken voluntary retirement but tendered his resignation. The respondents have referred to Rule 26 of the Rules of 1972 and have pointed out that the resignation entails forfeiture of past services; and because of such forfeiture, the petitioner was not entitled for grant of any pension.

It has been strenuously asserted by the learned counsel appearing for the petitioner that he had admittedly put in 20 years of qualifying service and the respondents are not justified in denying pension to the employee who had faithfully completed the period of qualifying service and had sincerely served the Department. The submissions made on behalf of the petitioner are not well founded and the petition remains absolutely bereft of substance.

It is not in dispute, and is an admitted case, that the petitioner quit the services by tendering his resignation on 16.05.1977 while stating specific reason for such resignation that he wanted to contest assembly election (vide Annexure -2). The Director, Telecom accepted the resignation effect from 18.05.1977 forenoon. The petitioner was aware of the course adopted by him and consequences thereto as is apparent from his representation Annexure 6. The petitioner had stated in the said representation thus:

> "Since I had tendered my resignation after completion of more than 20 years of regular service and was eligible for voluntary retirement under CCS (Pension) Rules, 1972 but due to emergent work of filing nomination for Assembly Election 1977 from Jayal (Nagaur District) constituency I preferred resignation than voluntary retirement."

For the petitioner consciously resigning, the consequences as per his service conditions were obviously to follow. Rule 26 (1) of the Rules of 1972 reads thus:

> "26. Forfeiture of service on resignation
>
> (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service."

In the face of such clear position in the Rules, there is no escape from the conclusion that with acceptance of resignation, past services of the petitioner stood forfeited rendering him ineligible for any pensionary benefit. Reference to Rule 48-A of the Rules of 1972 is not apposite to the facts of this case. Rule 48-A deals with the case where a government servant seeks voluntary retirement after 20 years of qualifying service by giving notice of not less than 3 months in writing to the appointing authority. As noticed above, the petitioner was aware of his position but preferred the course of resignation than voluntary retirement in order to contest assembly election. Rule 48-A has no application to the case of

petitioner. The claim for grant of pensionary benefits in this case invoking the grounds of financial crisis and sympathy could only be rejected as being entirely misplaced; no relief could be granted directly at conflict with and in opposition to the service Rules.

Learned counsel for the petitioner has referred to a decision of the Hon'ble Delhi High Court in the case of Nirmal Verma Vs. MCD and another: 2005 (6) SLR 222 dealing with entitlement of an employee to withdraw the resignation which has no application to the facts of the present case. Not only that the petitioner did not seek withdrawal of resignation at the relevant time, as per the admitted case of the petitioner, he had filed an Original Application before the CAT in that regard and the same was dismissed on 03.03.1993. Though the said order passed by the CAT on 03.03.1993 has not been placed on record but obviously, the proposition regarding withdrawal of his resignation has already met with its quietus.

Learned counsel has also referred to a decision of Hon'ble Orissa High Court in the case of Kanak Devi Pandey Vs. Union of India and others: 2006 (7) SLR 621. In the said case, the deceased husband of the petitioner had rendered total service of about 18 years before he was discharged. Service pension was sought to be denied on the ground that the incumbent had served army for lesser number of years

than those of minimum qualifying service. The assertion of the respondents about period of service rendered by the husband of the petitioner was found to be factually incorrect and it was found that he had rendered more than 15 years of qualifying service. The said decision in Kanak Devi Pandey's case cannot even remotely be co-related with the facts of the present case.

An incongruity is also noticed in the representation invoking sympathy as made by the petitioner, and the state of record of the present petition. The petitioner stated in his representation (Annex.6) that he had no issue who may look after in the days of his crisis. However, in the application made before this Court, not supported by any affidavit, for substitution, Shri Govind Singh has been stated to be the son of the petitioner Mohan Singh; and has been substituted as such.

Be that as it may, having examined the matter in its totality, this Court is satisfied that this writ petition remains bereft of substance and no pensionary benefits are admissible in this case. There is no cause for issuance of any writ, order or direction against the respondents.

The writ petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI),J.

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